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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1304

BORRIS M. KOMAR,
Petitioner,

against

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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Statement

The petitioner seeks to have this Court review by writ of certiorari, an order of the Court of Appeals of the State of New York, entered November 24, 1965, which, by a divided Court (VAN VOORHIS, dissenting and voting to reverse and direct a hearing), affirmed without opinion an order of the Supreme Court, Appellate Term, First Department, entered June 3, 1965, which had unanimously affirmed without opinion, an order of the Criminal Court of the City of New York, County of New York, entered February 3, 1965, denying his application for a writ of error, *coram nobis*. Peti-

tioner sought an order from the Criminal Court, "vacating and expunging from the records" a judgment of conviction entered against him by the former Court of Special Sessions, New York County, on July 7, 1960, after a trial, for violations of Sanitary Code, §§53 and 183, pertaining to "[n]uisances, conditions dangerous and prejudicial to life and health; * * *" and the sentence of the Court, a $500 fine or six months in the penitentiary plus three months in the workhouse. Execution of the workhouse sentence was suspended pending the defendant's future "good behavior." The fine was paid.

Following his conviction, defendant's motion for a new trial and his appeal from the judgment of conviction, both grounded on substantially the same assertions raised herein, were respectively denied by the Trial Court and unanimously affirmed without opinion by the Appellate Division, First Department in 14 A D 2d 837 and leave to appeal to the Court of Appeals was denied by FULD, J. on March 6, 1962.

The affirmance in the Court of Appeals of the order denying the writ of error, *coram nobis* is reported in 16 NY 2d 993, 212 N. E. 2d 894 (1965).

Question Presented

The primary issue presented is whether a writ of *coram nobis* may be used as a vehicle for an additional appeal, where all alleged errors not only appeared on the face of the record but also were part of the basis for an unsuccessful motion for a new trial, a lost appeal in the Appellate Division, First Department and finally an abortive attempt to appeal to the Court of Appeals. In any event, assuming *arguendo* that such a writ may properly be invoked, its denial herein presents no substantial federal question in the complete absence of proof that petitioner's conviction was obtained either by fraudulent use of perjured testimony or by withholding evidence favorable to him.

Petition and Answering Affidavit in *Coram Nobis*

The petitioner alleges that he "was denied a fair trial" within the meaning of the Fourteenth Amendment to the Constitution "inasmuch as his said conviction was based on perjured testimony submitted by the People * * *" (8*). The petition alleges further that as part of the People's proof, perjured testimony was offered by one Leroy J. Walker to the effect that the petitioner was the record owner of 166 West 94th Street, Manhattan up to March 19, 1959; that the People knew that such testimony was false and nevertheless withheld "exculpatory evidence" to the contrary; that the Court of Special Sessions was "under the influence of said perjured testimony" when it found him guilty and pronounced sentence and finally that the Court recommended "certain action by the Bar Association with respect to some suspicions of perjury or subornation of perjury on the trial of this case; * * *" but that "no action whatever was taken by the Bar Association during" the four years following his conviction (10, 12-13, 8).

The answering affidavit of the respondent denied *in toto* the unfounded charges contained in the petition and alleged that the matters raised by the petition were previously presented by the petitioner in a motion for a new trial and in an unsuccessful appeal except for the charge of alleged deprivation of constitutional rights (15-21).

Petitioner's reply affidavit charged further that his prosecution was motivated solely by the "spiteful revenge" of municipal authorities and reiterated the charge that the City knew that the petitioner was not the record owner of the premises (22-23).

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* Numbers in parentheses, unless otherwise indicated, refer to the pages of the Record on Appeal in the Appellate Term, First Department.

The Facts

(1)

The charged violations of the Sanitary Code on which the petitioner, the defendant below, stands convicted arose out of insanitary conditions and the presence of rodents existing in the premises at 166 West 94th Street, Manhattan on February 26, 1959, and "prior thereto". Upon the trial, the defendant did not contest the fact that such conditions existed. The Public Health Sanitarian testified for the People that on February 26, 1959, he inspected the premises, a four story brick building, which was vacant and "semi-boarded up" (*People* v. *Komar,* Record on Appeal, fols. 73-74, 77*). The inspector was unable to gain entrance to the building but described the surrounding area as follows (*id.,* fol. 78):

> "The rear yard was covered with an assortment of rubbish; the area covered all the rear yard was between 75 and 90 per cent of it, the rubbish consisted of lumber, paper, garbage, and also there was a large accumulation of water, and this comprised about 50 per cent of the area of the rear yard."

He said the water in the rear yard was 5 or 6 inches deep and stagnant and there were from four to six live rats running about the yard (*id.,* fol. 79). The rats observed on this date were known as Norwegian rats and were from a foot to 15 inches in length (*id.,* fol. 80). The inspector found rat droppings about the yard and in the front of the building and the front stairwell was completely covered with garbage and discarded furniture (*id.,* fols. 81, 79).

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* Record on Appeal from criminal conviction (14 AD 2d 837), to be submitted together with this brief.

The inspector described conditions on the premises as "optimum" for rodent breeding by reason of the presence of the accumulated rubbisn and water (*id.*, fol. 113). The building was only partially sealed in that the rear was entirely open and the front was boarded only below the second floor which permitted the ingress and egress of rats to and from the premises (*id.*, fols. 84-85). There were occupied multiple dwellings on both sides of the instant premises and it was the inspector's testimony that the condition which was described constituted a public health nuisance (*id.*, fols. 119, 115).

(2)

The People then called Leroy J. Walker, a real estate broker who testified that his first contact with the defendant took place in June, 1958 when he received a letter from him indicating that he, Komar, was interested in renovating the premises and was looking for a builder "interested in taking part ownership of the building" (*id.*, fols. 175-179, Peo.'s Exh. 5, 206). Thereafter, Walker went to see the defendant and offered to provide for the financing, construction and a permanent first mortgage on the building. Defendant agreed to his proposals and suggested that a corporation be formed in which he and Walker would each own 50% of the stock. Title to the premises was to be conveyed to the corporation (*id.*, fol. 183).

The agreement between Walker and the defendant, as finally reduced to writing is dated December 12, 1958 (*id.*, Peo.'s Exh. 6, pp. 207-212), and sets forth that the defendant would hold all shares of the stock in escrow until the work was completed (*id.*, fols. 186-187, 623-624); that the defendant was to be president of the corporation and that all corporate checks were to be countersigned by him (*id.*, fol. 623); that all officers and directors were to execute blank resignations to be held by the defendant as security for the performance of the contract (*id.*, fol. 624);

that the mortgage and building loan, as well as all contracts and disbursements, were to be subject to defendant's approval (*id.*, fols. 625-626); and finally upon the procurement of the first mortgage, defendant would be paid $20,000 as purchase price of the property (*id.*, fol. 627).

Upon the delivery of the deed to the corporation, the defendant was to receive a $20,000 purchase money mortgage (*id.*, fol. 627, Peo.'s Exh. 3, pp. 186-195). The defendant and his directors then agreed to resign and deliver their stock to Walker upon the payment of $10,000 towards the satisfaction of this mortgage (*id.*, fols. 630-631).

Early in 1959 Walker on behalf of the Amcol Corporation, the newly formed corporate entity, applied to the Embar Funding Corporation for a $22,000 loan for the temporary remodeling of the building but he was told that Amcol was not the owner of record (*id.*, fol. 190). Walker reported this fact to Komar who said that he "would take care of it" (*id.*, fol. 190). Thereafter, on or about March 13, 1959, Walker executed the purchase money mortgage (*id.*, Peo.'s Exh. 3, fols. 558-594) in defendant's office (*id.*, fol. 192). According to Walker's testimony, he did not check the date of this document which appears as January 8, 1959 (*id.* fol. 192). He testified further that he never received any shares of Amcol stock and never attended a stockholders' meeting of the Amcol Corporation (*id.*, fol. 213). Walker said that he paid Embar Corporation the sum of $500 as a deposit on the construction loan but never received any money from the defendant for any services in connection with the property (*id.*, fol. 216).

Anita Marra, who was listed in the certificate of incorporation of Amcol Corporation as one of the three directors (cf., Peo.'s Exh. 4, fols. 595-609), testified that in December, 1958 she was employed by J. C. Swaim, an attorney with offices adjacent to defendant's (*id.*, fol. 170); that although

she is listed as a director of the corporation, she never exercised any function of an officer or director, nor did she receive the share of stock listed in her name in the certificate of incorporation (*id.*, fols. 166-167) Clair Greenberg, the other director listed in the certification of incorporation, is a stenograper employed in defendant's own office (*id.*, fol. 168). When she signed this certificate, she was aware she was merely a dummy director (*id.*, fol. 171).

(3)

The defendant took the stand and testified that the purchase money mortgage, deed and bond relating to the transfer of the premises to Amcol Corporation all were executed in his office on January 8, 1959 (*id.*, fols. 292-293). These documents were not recorded until the middle of March of that year, according to his testimony, because of the failure of Walker to submit $140 for payment of the recording fees (*id.*, fols. 293-295). He denied that he had control of or managed the property after January 8, 1959 (*id.*, fol. 301). It was his testimony that Walker, through the Sulroy Realty Corp., was the party then in control (*id.*, fol. 302). Defendant's further denials included the assertion that he never owned any stock in Amcol Corporation or was president of that corporation after July, 1959 (*id.*, fols. 323-324).

All of the 100 shares of the corporation were in the name of Leroy Walker but the defendant asserted that he retained the shares as a security to insure the performance of the contract (*id.*, fols. 328-330). According to his testimony the sole consideration which he received for transferring title to Amcol was the purchase money mortgage. He testified that he received no cash at all (*id.*, fol. 339). The office of the corporation was located in defendant's office (*id.*, fol. 335). All his records concerning the transac-

tion were destroyed, however, following his retirement from the active practice of the law on June 30, 1959 (*id.*, fol. 462).

The defendant called Louis Chernow, an attorney and the notary public who witnessed the subscription of Leroy Walker's signature on the instant purchase money mortgage and bond (*id.*, fols. 418-420). It was his testimony that the papers were signed on January 8, 1959 but he admitted that he had no independent recollection of notarizing the document in question (*id.*, fols. 421, 432).

The Decisions Below

The Criminal Court of the City of New York, County of New York (RINGEL and CREEL, JJ. concurring, IMPELLITERI, not sitting), denied petitioner's application for a writ of *coram nobis* without a hearing, by order entered February 3, 1965. On appeal, this determination was unanimously affirmed without opinion in the Supreme Court, Appellate Term, First Department(CAPOZZOLI, HOFSTADTER, and HECHT, JJ.), by order entered June 3, 1965. After leave was granted by Judge BURKE of the Court of Appeals, that Court also affirmed the determination denying the writ without opinion. Judge VAN VOORHIS dissented and voted to reverse and direct a hearing.

ARGUMENT

***Coram nobis* was properly denied. No substantial federal question is presented herein since all alleged errors not only appeared on the face of the record but also were part of the basis for an unsuccessful motion for a new trial and a lost appeal (14 AD 2d 837). Moreover, there was a complete absence of proof that the convicition was obtained by the fraudulent use of perjured testimony or that the prosecution knowingly withheld evidence favorable to the petitioner.**

(1)

On the proof adduced by the People, the former Court of Special Sessions could have found that the defendant was the owner of 166 West 94th Street on February 26, 1959, the date of the inspection, on either of two separate and distinct theories. First, it could have accepted Leroy Walker's testimony that the transfer of the premises from the defendant to the Amcol Corporation, which ostensibly took place on January 8, 1959, actually occurred in the middle of March, 1959, subsequent to the date charged in the information. Moreover, even if the Court determined that Walker's testimony did not establish defendant's title in February beyond a reasonable doubt, it could have accepted the inescapable conclusion that the transfer of title to Amcol was only a sham and was merely a device employed by the defendant to evade responsibility for the premises, while retaining full control.

In the state of this record and the proof thus adduced, the petitioner now seeks to invoke this Court's jurisdiction on the ground that he was deprived of due process since his conviction was obtained by the use of the perjured testimony of Leroy Walker to the effect that the transfer of title took place in March, 1959, while the prosecution with-

held evidence that the transfer of title was accomplished in January of the same year (cf., *Matter of Morhous* v. *Supreme Court*, 293 N. Y. 131 [1944]). The substance of this argument was raised previously by the defendant, both in his unsuccessful appeal to the Appellate Division, First Department, and in his unsuccessful application for a certificate pursuant to Code of Criminal Procedure, §520, for leave to appeal to the Court of Appeals. These alleged errors were all known to the petitioner at the time of his trial and appeal and there was full opportunity to explore them. Cf. *Kyle* v. *United States*, 266 F. 2d 670 (C A 2nd Cir., 1959), cert. den. 361 U. S. 870 (1959). In those proceedings, the defendant utilized inferences, all drawn from the record on appeal, including exhibits submitted at the trial and in the subsequent motion for a new trial on the ground of fraud, in support of his contentions. There was evidence in the record before the Appellate Division, for instance, that Building Department applications filed January 21, 1959, listing the Amcol Corporation, Leroy Walker, Vice-President, as the owner, were in conflict with Walker's sworn testimony at the Trial as to the date title passed. But this evidence might not have been accepted by the Court of Special Sessions or the Appellate Division since the affidavits of the architect who prepared these documents stated conclusively that the information contained therein was furnished by the defendant, the petitioner herein, and further, that he (the architect) never met Walker until March, 1959 (fols. 800-801). The record, thus falls far short of establishing any lack of honesty or truthfulness on the part of Walker and, at best, an issue of credibility between the defendant and Walker was presented.

Of course, it is well settled that *coram nobis* may not be invoked to test the issue of credibility of witnesses. *People* v. *Bell*, 31 Misc 2d 814 (Gen. Sess., N. Y. Co., 1961),

aff'd 16 AD 2d 624 (1st Dept., 1962), cert. den. 371 U. S. 872 (1962). Moreover, for the purpose of this proceeding and contrary to petitioner's assertions (Petr.'s Br., pp. 15-19), only allegations of fact and not conclusions of law must be treated as true, in the absence of an original hearing. Cf. *Kyle* v. *United States, supra, United States* v. *Rosenberg*, 200 F. 2d 666, 668 (C A 2nd Cir., 1952). Under these circumstances, we may assume that the Trial Court could have believed Walker and found that title had passed after March 13, 1959 since the date title allegedly passed was supplied to the Building Department indirectly by the defendant. If, indeed, this gave rise to an inference damaging to the defendant, he could have gone into the matter on cross-examination. *Cf., McGuinn* v. *United States*, 239 F. 2d 449 (C A D C Cir., 1956). In any event, the Court need not have accepted Walker's evidence at all on this point to convict the defendant, as we shall demonstrate, in view of the conclusive proof that the Amcol Corporation was merely the *alter ego* of Borris M. Komar, the petitioner herein. Cf., *People* v. *Cross & Brown Co.*, 277 N. Y. 701 (1938); cf. also *People* v. *Chodorov*, 12 N Y 2d 176 (1962), cert. den. 375 U. S. 46 (1963).

Petitioner's charge impugning the honesty and integrity of the former Assistant Corporaton Counsel who prosecuted him is, of course, completely irrational and should be rejected. The record in the criminal case established his skill and integrity and requires no further documentation herein (Cf., e.g. *id.*, fol. 512 where the Trial Court complemented the Assistant Corporation Counsel for his preparation and presentation of the case). As to the charge of subornation of perjury, the People could not be expected to be bound by their own records when faced with Walker's explanation that the title papers were not finally executed until on or after March 13, 1959.

Similarly, the alleged suppression of the Building Department record is, also, a complete sham. That file was at all times available to the petitioner who, of course, never requested it, nor did he seek to subpoena it (cf. *People* v. *Komar,* Record on Appeal, Hinchey affidavit, fols. 805-812). His disclaimer of knowledge concerning the existence of the Building Department applications in this file, was properly rejected by the Trial Court in view of the fact that such applications had been prepared by one Krause (defendant's architect since 1950), at defendant's request, from information furnished by defendant and were in turn forwarded by Krause to the defendant, who then sent them to Walker. All of Krause's dealings regarding the building were with the defendant (cf. *id.,* Krause affidavit, fols. 796-804).

Petitioner's further argument, *dehors* this record, relies on his alleged exoneration by the New York City Bar Association as proof that the testimony of the People's witnesses was perjured. His tortured reasoning on this point (Petition, parag. 3, p. 8; Br. p. 17) intimates that since the Trial Court recommended "certain action by the Bar Association with respect to some suspicions of perjury" at the conclusion of the trial (*id.,* fols. 523-524) and no action was ever taken by the Association in the past five years against him and further that since he has not been informed of any such investigation, that the Association must have cleared him and found perjury in the testimony of the People's witnesses. There is, of course, no evidence, however, that any investigation was ever undertaken by the Association in this matter and the record is silent as to whether the Court ever pressed the matter. On this point, we have been authorized by Judge Ringel to state that a majority of the bench reconsidered the matter after trial and decided in October, 1960 not to press charges against the petitioner before the Bar Association "in view of the defendant's age and previous good record."

Under ordinary circumstances, errors appearing on the face of the record are usually not reviewable by writ of *coram nobis*. *People* v. *White*, 285 App. Div. 1045 (1st Dept., 1955), aff'd 309 N. Y. 636 (1956), cert. den. 352 U. S. 849 (1956); *People* v. *Eastman*, 306 N. Y. 658 (1953). Also, *coram nobis* may not be used as a vehicle for an additional appeal or as a substitute for an appeal and "sound reasons" must exist "for failure to seek appropriate earlier relief." *Morgan* v. *United States*, 346 U. S. 502, 512, (1954); cf., also *People* v. *Schwartz*, 12 N Y 2d 753 (1962); *People* v. *Shapiro*, 3 N Y 2d 203 (1957); *People* v. *Sullivan*, 3 N Y 2d 196 (1957); *People* v. *Sadness*, 300 N. Y. 69 (1949), cert. den. 338 U. S. 952 (1950); *People* v. *Kendricks*, 300 N. Y. 544 (1949). The writ is, as Judge FULD succinctly stated in *People* v. *Howard*, 12 N Y 2d 65, 66 (1962), cert. den. 374 U. S. 840 (1963), to be "treated as emergency measure born of necessity to afford a defendant a remedy against injustice when no other avenue of judicial relief is, or ever was, available to him." Cf., also *Morgan* v. *United States, supra; People* v. *Brown*, 13 N Y 2d 201 (1963), cert. den. 376 U. S. 972 (1964).

To avoid the impact of these basic rules, the petitioner now argues (Petr.'s Br., pp. 7-15), that the People may not "take refuge in independent state substantive or procedural rulings in a case where due process of law was disregarded during the trial". However, it is also well settled that the writ "may not be employed to vacate a judgment even though * * * such judgment had been 'procured as the result of a trial during the course of which rulings were made in violation of constitutional right * * * if there was a right to review such rulings on an appeal from the judgment' ". *People* v. *Howard, supra* (12 N Y 2d at p. 67), opinion *per* FULD, J. quoting from *Matter of Hogan* v. *Court of General Sessions*, 296 N. Y. 1, 6 (1946). Cf. also *Adams* v. *United States ex rel McCann*, 317 U. S. 269 (1942); *United*

States v. *Smith*, 306 F. 2d 457 (C A 2nd Cir., 1962); *United States* v. *Gernie*, 287 F. 2d 637 (C. A. 2nd Cir., 1961); *United States* v. *Aderman*, 216 F. 2d 564 (C A 7th Cir., 1954); *United States* v. *Rosenberg, supra; United States* v. *Walker*, 197 F. 2d 287 (C A 2nd Cir., 1952); *Howell* v. *United States*, 172 F. 2d 213 (C A 4th Cir., 1949), cert. den. 337 U. S. 906 (1949).

It follows, therefore, that the errors herein alleged cannot now form a basis for *coram nobis* relief. All questions of perjury and repression of evidence were resolved against this petitioner by the Courts of New York State with full knowledge of all the facts alleged herein. If those Courts had found these contentions to be valid, they could and would have set the judgment of conviction aside and ordered a new trial. Cf. e.g. *Lyons* v. *Goldstein*, 290 N. Y. 19 (1942); *People* v. *Savvides*, 1 N Y 2d 554 (1956); *People* v. *Fisher*, 4 N Y 2d 943 (1958). In any event, the law is well settled that, in the absence of any proof of fraudulent use of perjured testimony by the prosecuting attorney, *coram nobis* does not lie. *Napue* v. *Illinois*, 360 U. S. 264 (1959); *People* v. *Costello*, 8 N Y 2d 954 (1960), cert. den. 365 U. S. 852 (1961), reh. den. 366 U. S. 915 (1961); *People* v. *Oddo*, 300 N. Y. 649 (1950), cert. den. 339 U. S. 961 (1950); *People* v. *Sadness, supra.*

(2)

There was, of course, an overwhelming weight of evidence to support the inference that the petitioner was the actual party responsible for the premises on February 26, 1959. The contract between Walker and the defendant below pursuant to which the Amcol Corporation was formed, was signed on December 12, 1958 (*People* v. *Komar*, Record on Appeal, Peo.'s Exh. 6). The Corporation was formed by the defendant on December 28, 1958 (cf. *id.*, Peo.'s Exh. 4, Certificate of Incorporation). It was

Walker's testimony that he thought that the defendant had executed a deed conveying the property to the Corporation, but in March, 1959, when he was completing arrangements on a building loan from Embar Funding Corporation, he was informed that a search showed that Amcol was not the owner of record. It was only then, according to Walker, on or after March 13, 1959, that the defendant finally executed the deed conveying the property to Amcol. The undisputed fact was that the deed, bond and mortgage were not recorded until March 18, 1959. It appears further, moreover, from defendant's initial correspondence with Walker (*id.*, Peo.'s Exh. 5) that he was merely seeking a contractor "interested in taking part ownership in the building and completing the conversion job." There was no indication in the record that the defendant ever intended to completely divest himself of title to the building.

We submit that, notwithstanding the testimony of the defendant and his notary, there is nothing inherently incredible or surprising on the face of Walker's account. Walker knew in January and February that he had not yet executed the bond and mortgage, but could have been unaware that no conveyance had been made to the Corporation. He could have believed that the defendant executed a deed to the Corporation without having received the bond and mortgage, because, as we will show, the Corporation was merely the *alter ego* of the defendant. Such a conveyance would not have involved any loss of control by the defendant over his property. Certainly, on the basis of this defendant's history of evasion and his incredible reasons for not even filing the January, 1957 Referee's deed by which the property was conveyed to him, defendant has shown himself to be not beyond such a subterfuge to conceal his interest in the building (see *id.*, fols. 319-321, 404-406); *cf.* also *People* v. *Komar*, 10 A D 2d 667 (1st Dept.,

1960). The answer to the question why the defendant felt constrained in March, when he executed the deed, to make it appear as though the conveyance took place in January instead of the date of the actual transfer of title lies in the imminent criminal prosecution which the defendant knew would arise from the Department of Health inspection of February 26, 1959. The false dating of the deed was merely a belated attempt by the defendant to shield himself behind the cloak of corporate immunity.

Moreover, even if this evidence is discounted, the conviction was proper since it conclusively appears in the record that the defendant and Amcol Corporation were one and the same, and the transfer to the Corporation did not divest the defendant of any domination or control over the property. The record showed conclusively that the defendant drew up and filed the corporate papers; that he was the President of the Corporation; that the only directors other than the defendant were a stenographer employed by him and one employed by an associate of his; that the stenographers were merely "dummy directors" and finally that the only stockholders listed in the Certificate of Incorporation were the defendant and the stenographer directors (*id.*, fols. 166-171, 606). Walker's name nowhere appeared on the Certificate of Incorporation. The home office of the Corporation was defendant's office (*id.*, fols. 335, 605, 608), and the defendant was the custodian of the corporate books which were never kept (fols. 353, 354) and which were apparently destroyed in June, 1959 (*id.*, fol. 462).

Further evidence of defendant's complete control over the corporation may be gleaned from People's Exhibit 6, the contract between defendant and Walker, wherein it is provided that defendant and Walker were each to have one-half of the stock in the corporation, but defendant was to

retain all of the stock, endorsed in blank, for security purposes and that Walker was to sign a blank resignation to be held by defendant pending the performance of the contract (*id.*, fols. 623-624). The defendant had to approve the terms of the building loan, all renovation contracts for the premises and all payments for work to be done on the premises (*id.*, fol. 626).

Following the execution of this contract, defendant exhibited a continuing active interest in the property. He retained an architect, David Krause, to file alteration plans with the Building Department (*id.*, fols. 799-800). All dealings between the architect and Amcol Corporation were through defendant (*id.* fols. 800-801). Defendant also sent a draft of a letter to Walker, to be retyped on Walker's stationery and then filed it with the Building Department (see Peo.'s Exh. 7 and Exh. 3 annexed to Komar Affidavit). Other evidence of defendant's active role in the management of the property is found in the correspondence between him and Walker after the property had supposedly been conveyed to Amcol Corporation (*id.*, Peo.'s Exhs. 8-9).

Under the circumstances, the sole inference open to the Trial Court was that defendant was the party responsible for the premises, since he was the person in whom dominion and control of the building were vested. Having failed in his duty to ameliorate the abominable conditions existing therein, defendant was properly found guilty of both charges of the information and the Court properly disregarded the paper title which was supposedly possessed by Amcol Corporation. *Smith* v. *Feigin*, 273 App. Div. 277 (1st Dept., 1948), aff'd 298 N. Y. 534 (1948).

CONCLUSION

The petition for certiorari should be denied.

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Respectfully submitted,

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